(MPC) owns 30 acres of land which are located in the BPSOU. The proposed decree is a cash-out of MPC's liability under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), and settles potential claims under CERCLA § 106, 42 U.S.C. 9606 and Section 7003 of RCRA, 42 U.S.C. 6973. Under the terms of the proposed decree, MPC will pay the sum of $100,000 to the EPA Hazardous Substances Superfund.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Montana Power Company,* D.J. Ref. 90–11–3–1734. Commuters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003 of RCRA, 42 U.S.C. 6973(d).

The Consent Decree may be examined at the Office of the United States Attorney, District of Montana, 2929 Third Avenue North, #400, Billings, MT 59103, at U.S. EPA Region VIII, 999 18th Street, Suite 700, Denver, CO 80202, and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $26.75 payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–11264 Filed 5–4–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act 33 U.S.C. 1301, et seq.

Notice is hereby given that on April 23, 1999 a proposed Consent Decree (''Decree'') in *United States* v. *Sinclair Oil Corporation,* Civil Action No. 98 CV 166B, was lodged with the United States District Court for the District of Wyoming. The United States filed this action pursuant to Sections 301 and 311 of the Clean Water Act, as amended by the Oil Pollution Act, 33 U.S.C. 1301 and 1321, as amended by the oil pollution Act, 33 U.S.C. 1301 and 1321, seeking injunctive relief and civil penalties for the Defendant's discharge of oil from a rupture in its underground pipeline into a navigable water of the United States in violation of the Clean Water Act and the Oil Pollution Act.

The proposed Consent Decree requires the Defendant to either: (i) Repair and replace all sections of its pipeline manufactured by the same company that manufactured the ruptured pipe; or (ii) perform an ultrasonic ''smart'' pig of these portions of the pipeline, and repair or replace those portions as indicated by the results of the smart pig. In addition, Sinclair will pay a civil penalty of $29,000, including interest, to the Oil Spill Liability Trust Fund. Finally, Sinclair will perform a Supplemental Environmental Project involving the replacement of 1000 feet of pipe from one of Sinclair's underground pipelines which passes under Casper Creek—a navigable water within a few miles of the spill site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to, *United States* v. *Sinclair Oil Corporation*, Civil Action No. 98 CV 166B, and D.J. Ref. #90–5–1–1–4424.

The Decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Denver Field Office, 999 -18th Street, North Tower Suite 945, Denver, Colorado,80202 and the U.S. EPA Region VIII, 999 18th Street, and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington D.C. 20005, (202) 624–0892. A copy of the Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 2005. In requesting a copy, please enclose a check in the amount of $10 for the Decree (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resource Division.

[FR Doc. 99–11267 Filed 5–4–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. 1:98CV02836]

Public Comments and Response on Proposed Final Judgment, United States v. Pearson plc, Pearson Inc. and Viacom International Inc.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), the United States of America hereby publishes below the comments received on the proposed Final Judgment in *United States* v. *Pearson, plc, Pearson Inc. and Viacom International Inc.,* Civil Action No. 1:98CV02836, filed in the United States District Court for the District of Columbia, together with the United States' response to the comments.

Copies of the comments and response are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW, Washington, DC 20530, telephone: (202) 514–2481, and at the Office of the Clerk of the United States District Court for the District of Columbia, United States Courthouse, Third Street and Constitution Avenue, NW, Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

Civil Action No. 1:98CV02836
Judge: James Robertson
Filed: April 22, 1999

PLAINTIFF'S RESPONSE TO PUBLIC COMMENTS

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (1997) (''Tunney Act'') the United States hereby responds to the four public comments received regarding the proposed Final judgment in this case.

I. Background

On November 23, 1998, the United States filed the Complaint in this matter alleging that the acquisition by Pearson plc and its wholly owned subsidiary, Pearson Inc. (collectively ''Pearson'') of certain publishing businesses of Viacom International Inc. (''Viacom'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that Pearson and Viacom, two of the nation's largest publishers of textbooks and other educational materials, compete head-to-head in the development, marketing and sale of comprehensive elementary school science programs and in the development, marketing and sale of textbooks used in thirty-two college courses. The Complaint also alleges that the defendants are two of only a few firms that compete in these markets and that they account for a significant share of all sales. Pearson's acquisition of Viacom's publishing businesses was therefore likely to reduce competition and to result in higher prices for these comprehensive science programs and for college textbooks and other educational materials in these courses.

Simultaneous with the filing of the Complaint, the United States filed a Final Judgment and Stipulation signed by all the parties allowing for entry of the Final Judgment following compliance with the Tunney Act. A Competitive Impact Statement (''CIS'') was also filed with the Court and published in the **Federal Register**, along with the proposed Final Judgment, on December 21, 1998 (see 63 FR 70,422).

The proposed Final Judgment permits Pearson to acquire the publishing businesses from Viacom, which it did on November 27, 1998, but requires Pearson to divest itself of one of its two elementary school science textbook programs and fifty-five college textbooks serving thirty-two college course markets. On December 23, 1998, Pearson sold Viacom's elementary science program to Houghton Mifflin Company.

The sixty-day period for public comments expired on February 19, 1999. The United States has received four comments, copies of which are attached, from the following individuals: (1) Professor Gary Musser; (2) Professor Frederic Martini; (3) Mr. Clayton Jones; and (4) Professors Vogeli, Ginsburg and Greene. The United States has carefully considered the views expressed in these comments, but nothing in these comments has altered the United States' conclusion that the proposed Final Judgment is in the public interest. Once those comments and this Response are published in the **Federal Register**, the United States will have fully complied with the Tunney Act and will then file a motion for entry of the proposed Final Judgment.

II. Response to Public Comments

Two of the comments received by the United States were from college textbook authors who raised concerns about the divestitures required by the decree. Dr. Gary L. Musser, the co-author of a Prentice Hall textbook to be divested, wrote that he is concerned that the divestiture will have a disruptive and harmful effect on the sales of that book as well as on another of his textbooks that is not to be divested. Both books are in the process of revision and Dr. Musser believes that they benefit from being marketed together. He believes that current plans for revisions, plans to supplement his to-be-divested book with a CD/Web package, and the schedules for republication will be jeopardized if his book is sold to another publisher at this time. He urges the United States and the Court to consider revising the decree so as not to require divestiture of his book.

Dr. Frederic Martini, the author of five textbooks published by Prentice Hall, none of which is required to be divested under the Proposed Judgment, also raised concerns about the proposed divestitures. Dr. Martini believes that the acquisition is likely to have anticompetitive effects in numerous publishing markets, and believes that the divestitures will not go far enough to preserve competition and innovation and will negatively impact authors and the marketing, sale, and development of their textbooks. Specifically, Dr. Martini contends that competition among publishers—and, in particular between Pearson and Viacom—has resulted in product innovation and the development of ''hi-tech'' electronic educational materials that supplement college textbooks. He is concerned that the acquisition will lessen this product innovation and development because the competition between the Pearson and Viacom titles will be lost; he is also concerned that the acquisition will raise barriers to entry by small publishers and reduce opportunities for new textbook authors and new texts.[1]

Dr. Martini recommends revising the decree so that Pearson may retain all of the Viacom titles but must hold them separate from the rest of their operations., He would specifically prohibit the ''merging of lists and the coalescing of related divisions, such as acquisitions, editorial, marketing, sales, and technology support for the imprint titles.'' He hopes that that would allow the two companies to ''maintain their distinctive character'' and continue to develop competitive technologies. He concedes, however, that this might limit Pearson's ability to maximize economies of scale.

The United States believes that the divestiture of all the designated titles is essential to preserve competition in the markets alleged in the Complaint. The goal of the Final Judgment is to replace the competition eliminated as a result of the acquisition with one or more new viable competitors that will be capable of being in the market over the long term. To accomplish that, the proposed Final Judgment contains numerous requirements to ensure that the acquirer or acquirers of these programs and textbook titles continue as viable and effective competitors. These include provisions requiring that the acquirer have the opportunity to employ certain personnel, and provisions requiring divestiture of all tangible and intangible assets that make up each of the products. The United States must also be satisfied that the acquiring parties have the ability and intention to publish and market the divested products as viable, ongoing businesses.

Although the United States recognizes that divestiture of these college textbooks may have some short-term effect on their development and marketing, the proposed decree includes provisions designed to minimize any disruption. First, the proposed Judgment requires prompt divestitures (within the later of five months after filing of the Judgment with the Court or ten days after the expiration of the 60-day comment period) to minimize the period of uncertainty and discontinuity of ownership of the divested titles. In addition,until divestiture is completed, the proposed Judgment requires the defendants to take steps to preserve the viability and competitiveness of those title; these include requirements to maintain funding, development, promotional advertising, marketing, editorial and merchandising support, and to maintain and increase sales. Moreover, the United States believes that, absent divestiture of the titles to a new publisher, the authors of these textbooks would face a far greater risk in the longer term that their texts and ancillary materials will not be developed, promoted and revised as effectively as they otherwise would have been because their new owner now also markets a good number of their most important competitors.

Dr. Martini's proposal that Pearson be allowed to retain all of the Viacom titles but more or less permanently be required to operate various divisions separately and be prevented from merging titles and imprints will not best preserve competition in the affected college textbook markets. Divisions owned, managed by and answerable to a single owner will not maximize competition with each other. A hold-separate agreement will not alter Pearson's financial incentive and ability to allocate funding and other resources

[1] Dr. Martini states that, for anatomy and physiology—one of the college textbook courses for which divestiture of texts is required—Pearson will account for fifty to sixty percent of all textbook sales after acquisition. Based on our investigation, which included review of sales data collected by an industry reporting service, we believe that, after the proposed divestiture Pearson makes, its share of this market will be no more than it was prior to its acquisition of Viacom's titles—somewhat less than fifty percent.

among the various textbooks (or textbook divisions) that it will own in a way to maximize company profits. It also likely would not alter Pearson's incentive and ability to raise prices on titles, or reduce provision of supplemental products and services, in those markets where it accounted for a large share of sales. Such a permanent hold-separate order would also be difficult to administer and likely impossible to enforce. The Court would be hard-pressed to determine whether Pearson was promoting certain titles as fully and effectively as it would absent ownership of the other competing titles. Finally, as Dr. Martini concedes, such an arrangement might limit Pearson's opportunities to maximize economies of scale and thus raise its costs, which could result in higher prices to consumers. For these reasons, courts have long and consistently recognized that maintenance of completely independent, separately owned competing entities is the effective remedy for mergers or acquisitions that violate the antitrust laws.

In another comment received by the United States, Clayton E. Jones, Chief Executive Officer of Jones and Bartlett, an educational publisher, raised concerns that the decree will not achieve its intended results because another large competitor is likely to purchase the divested products. He states that it is necessary to ''take [the] decree one step further and allow some of the smaller players in the industry an opportunity to purchase these products'' so that the decree will achieve its objective of enhancing competition in the industry.

The proposed Final Judgment is designed to ensure that the purchaser or purchasers of the divested products will be viable and effective competitors and does not exclude—or give preference to—any kind of publisher from consideration as a purchaser. A small publisher is certainly eligible to purchase the divested products so long as the United States is satisfied that it has the ability and intention to publish and market the divested products as viable, ongoing businesses. Moreover, the United States will not approve a proposed divestiture to a publisher that is already a substantial competitor of the program or title that it seeks to acquire. Thus, Mr. Jones need not be concerned that there will be a divestiture to a large competitor that will not preserve competition in the affected markets.

Finally, the United States received a comment from three college professors, Drs. Bruce R. Vogeli, Herbert Ginsburg of Columbia University and Carole Greenes of Boston University, who stated that, although they concurred with the proposed divestitures relating to elementary school science programs, the United States should have also concluded that the acquisition lessened competition in elementary school mathematics programs and sought a divestiture of one of these programs as well. They place particular emphasis on the value that they believe competition has had in the development of innovative mathematics textbooks and point to increased concentration among publishers in this area. They urge the Court to ''require the plaintiff to revisit the proposed final settlement to show cause why relief similar to that provided for elementary school science not be required for elementary school mathematics as well.''

The United States conducted a thorough investigation of the likely impact of Pearson's proposed acquisition of the Viacom publishing businesses on numerous possible markets, including the market for the development, marketing and sale of elementary school mathematics textbooks. The investigation included the review of thousands of documents, and information from numerous industry sources, including teachers, school administrators, authors, professors and publishers. Based on that investigation, the United States concluded that the acquisition would lessen competition in violation of Section 7 of the Clayton Act with respect to elementary school science programs, and the thirty-two college textbook markets alleged in the Complaint.

In essence, the authors of this comment ask the Court to require the United States to amend its Complaint to allege an additional violation of Section 7 of the Clayton Act and to seek additional relief, or, at least, to inquire into the government's investigation and require it to explain and justify its analysis and conclusions. Such judicial review of the government's determination of which conduct to challenge or which violations to allege in the Complaint is not contemplated by the Tunney Act. The government's decision not to challenge particular conduct based on the facts and law before it at a particular time, like any other decision not to prosecute, ''involves a complicated balancing of a number of factors which are peculiarly within [the government's] expertise.'' *Heckler* v. *Chaney,* 470 U.S. 821, 831 (1985). As the United States Court of Appeals for the District of Columbia recently held, it is not the role of the Court in a Tunney Act proceeding to go beyond the Complaint ''to evaluate claims that the government did not make and to inquire as to why they were not made.'' *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1459 (D.C. Cir. 1995). Last year, the United States Court of Appeals for the District of Columbia stated that courts, in making their public interest determination:

> must examine the decree in light of the violations charged in the complaint and should withhold approval only if any of the terms appear ambiguous, if the enforcement mechanism is inadequate, if third parties will be positively injured, or if the decree otherwise makes ''a mockery of judicial power.''

Massachusetts Sch. of Law at Andover, Inc. v. *United States*, 118 F.3d 776, 783 (D.C. Cir. 1997), quoting *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1462 (D.C. Cir. 1995).

III. Conclusion

After careful consideration of these public comments, the United States has concluded that entry of the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violations alleged in the Complaint, and is therefore in the public interest. When those comments and this response are published in the **Federal Register**, the United States will move the Court to enter the proposed Final Judgment.

Dated: April 22, 1999.

Respectfully submitted,

John W. Poole (DC Bar #56944)

Joyce L. Bartoo (DC Bar #359264)

David C. Kully (DC Bar #448763)

Ahmed E. Taha,

Attorneys for the United States, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, NW., Suite 300, Washington, DC 20530, (202) 616–5943.

Attachment 1

To: Ms. M. J. Moltenbrey,

Chief Civil Taskforce, Anti-Trust Division, United States Department of Justice

Re: Forced sale of my book from Prentice-Hall

I am a co-author of two books currently published by Prentice-Hall—Mathematics for Elementary Teachers and Mathematics in Life, Society, and the World. A couple of months ago, I was notified by Prentice-Hall that the first book had to be sold to allow the purchase of Simon-Schuster by Pearson. I asked if I had any rights and was told that this was a ruling of the Department of Justice—that was it! I just found out that I do, in fact, have a chance to comment—perhaps to object and obtain a reversal in the ruling.

I understanding that there are anti-trust considerations in this case. However, there are also human and artistic considerations that you can consider. Let me share these with you.

1. We are currently in the revision process for both of my books. Prentice-Hall is

committed to publishing BOTH books and the books are scheduled for July/August publication dates so our adopters can have the most up-to-date books for their students this fall. Forcing the sale of either of these books will jeopardize this schedule. Forcing the sale of these books as a package may work to our disadvantage since there is no guarantee that both books will be published by another publisher.

2. Although my books have separate markets, there is overlap in the material and instructors who use one of my books are likely to want to use the other. When marketing, Prentice-Hall is motivated to make this connection. If my books are split, I and my co-authors will suffer because this connection will be less obvious.

3. Prentice-Hall is planning to add a CD/Web package to my Mathematics for Elementary Teachers book. This will be a creative addition to the marketplace. However, there is no guarantee another publisher will pick up these extras. In this case, instructors and their students are the ones who will be disadvantaged.

4. Prentice-Hall and Addison-Wesley both have other competing books for elementary teachers that they can sell without causing a disruption as described in items 1 through 3 above.

By allowing my two books to stay with Prentice-Hall, authors, instructors, and students benefit. I hope that you, the Department of Justice, and the court can review the uniqueness of this situation and will work to provide some justice for individuals in this case.

Sincerely,

Gary L. Musser

Attachment 2

February 6, 1999.

To: M.J. Moltenbrey,

Chief, Civil Task Force, 325 Seventh Street, Suite 300, Washington, D.C. 20530.

Cc: John Poole

Joel J. Klein

Sen. Daniel Akaka

Rep. Patsy Mink

I am a textbook author whose texts are published by Prentice Hall. My first book contract was signed in 1981, and I have been writing either part time or full-time since then. I am a member of the Authors Guild, the National Writers Union, and the Text and Academic Authors Association. As college faculty, I am also a member of the National Association of Biology Teachers, the Society for College Science Teachers, the American Physiological Society, and the Human Anatomy and Physiology Society. I am therefore well acquainted with both the process of textbook authoring and publishing and the dynamics of our educational system from a faculty member's perspective. I am writing to express my concerns about the Final Judgement issued by the Department of Justice permitting the merger of Pearson Inc. and the educational publishing units of Viacom. During the evaluation period I provided information to Mr. Poole and his associates at the DoJ, and I feel that the Judgement does not adequately address several of the problematic aspects of this merger.

The Final Judgement as stipulated will not in fact preserve competition and innovation in the market. Innovation in the textbook today is occurring most rapidly in the hi-tech electronic areas. Examples include companion web-sites, course management software, distance learning systems, computer-based testing programs, interactive tutorials and simulations, and presentational systems and software. With very few exceptions, all of these products are *given away* free when the corresponding textbook is adopted. The development, upgrading, and maintenance of these products, which is very expensive, thus represents a continual drain on corporate profits. These expenditures can only be justified on the grounds that they will increase the market share of the associated textbook. In a market with many competitors, the associated costs are high enough that each publisher tends to have specialties. Thus with 6 competing publishers, each with viable texts, each would have a full range of supplements, but each would spend extra money on developing one particularly innovative product or approach different from (or better than) what was offered by the competition. These innovations would of course be focal points for sales and marketing presentations. Meanwhile, each company would be continually looking for cost-effectives ways to match or better the strengths of the competition.

When competitors A and B merge, the new company pools resources within their disciplines. Let me give you a specific example from the discipline where I publish (anatomy and physiology). Prentice Hall had what was generally recognized as the best web-site technology and the most innovative lecture presentation software available with their texts. Addison-Wesley/Longman had great physiology simulations available with their A&P texts. PH was actively working on physiology simulations that would be competitive (and out-do) the AWL offerings, while AWL was trying to improve their web-sites and their presentational software. But now under Pearson the web-site, presentational software, and simulation programs will be shared. This has three noteworthy effects on competitiveness:

1. Prentice Hall can abandon its efforts to develop unique simulations, and AWL can stop worrying about building a better web-site or developing new presentational software.

2. The combined companies are able to offer a great web-site, good presentational software, and great simulations with any of their texts. It therefore becomes even more difficult for other publishers to compete in this market. The stakes have now been raised—a publisher must face the combined threat of both the web-site, presentational software, and simulations, whereas before it need only compete with individual offerings. The costs are so high that small publishers are priced out of the market, and over time many large publishers have been forced to cut lists to devote money and personnel to supporting an ever-smaller number of texts. The Department of Justice could of course say that this sort of thing is a benefit to consumers, since an instructor can order a good text and get a great web-site, good presentational software, and terrific simulations. But that is precisely the argument that Microsoft is using to oppose the DoJ's antitrust suit. If the DoJ feels that it is wrong to give that kind of market power to a software company, why permit it in the textbook market?

3. The authors of the individual texts published by either company lose their distinctiveness and their marketing momentum. This drastically reduces competition between PH and AWL titles. It doesn't matter to Pearson whether a particular sale is credited to PH or AWL, as long as the sale stays ''in the family.'' But it matters a great deal to the individual authors involved. I find it infuriating that projects that I have worked on for years—including the related software and web-sites—should be turned over to my competition. My texts were often the ''test cases'' for developing these products. Once the bugs were ironed out, the product was used as a template that could benefit other PH texts. All of the time and effort that I expended in evaluating and enhancing these products is essentially lost when they are handed to AWL. Furthermore, I worked with the programmers for over a year developing a CD–ROM interactive version of my text. Now that shell will also be handed over to my competition. In essence, my ability to continue to be innovative and to increase the market share of my texts has been severely compromised. Further, my interest in ''pushing the envelope'' of technology is greatly diminished since whatever I do will be immediately gifted to a major competitor.

Even after the divestiture (see comments below) PH and AWL will control 50–60% of the A&P market; my text accounts for about 25%. Prior to the merger I was competing aggressively for 75% of the market, and gaining market share rapidly against AWL. Now Pearson will compete for 40–50% of the market, with minimal (or managed) competition between my text and AWL titles. This is certainly not a demonstration of ''increased competitiveness.''

Concerning the divestiture of titles. I do not believe that eliminating the books specified will materially affect the scoper or competitive force of the combined companies. The DoJ has identified 55 titles with annual gross revenues of roughly $35 million from a combined list of approximately 3500 titles and annual gross revenues of $2.4 billion. The titles *per se* are much less important than the leverage that the combined corporation can bring to bear, and this applies even to markets that they do not dominate at present. However, the divestiture will have a serious negative impact on the authors involved. The books will be in turmoil for the next edition cycle at least—handing a textbook to another publisher is not like giving another retailer a toaster. The books are transferred without many of the factors that made them successful. Obvious examples of important factors are the editorial teams, marketing specialists, and sales representatives familiar with the product, but less obvious and equally important factors include the programming teams that developed the supplements packages, web-sites. CD–ROMs, and so forth. Without exception the titles transferred to another publisher will lose market share; this is not due to any fault of Pearson's, it is just a fact of life. A publisher entering these new markets will have no track record with the faculty, and relationship sales are important in this industry. Further, their sales reps will be uncertain as to key features and competitive issues. Of course, by default most of the market share lost by these titles will be captured by Pearson, and this circumvents the stated goal of the divestiture.

As faculty members, textbook authors are the only people with direct experience in all areas affected by this merger—textbook writing production, marketing, and sales, as well as market dynamics, faculty concerns, and the educational system in general. It is therefore disconcerting that the issues raised by the Authors Guild, the Text and Academic Authors Association, and the National Writers Union—all of whom strongly opposed this merger—have been largely ignored. The combination of these companies will further reduce the opportunities for new authors, new texts, and new publishers. Small publishers are already unable to compete in markets where the cost of entry is so very high. Ten years ago an aspiring author in the biological sciences could approach 8 major publishers with a manuscript idea. Now that author could approach 2 or 3 (depending on the topic), and the odds are that each already has one or more titles in that market. Along with the decrease in opportunity comes a reduction in leverage and bargaining power. It has become increasingly difficult to negotiate favorable contract terms—after all, where else are you going to go?

For all of the above reasons I would like to see the Department of Justice review and revise its Judgement regarding this merger. It is probably logistically impossible to reverse the decision, as the companies are well into their integration phase. However, I would suggest that you consider adding provisions that would permit the amalgamation of ''backroom'' operations, such as inventory, accounting, purchasing, etc., but require the continued maintenance of separate imprints and competition in the market. This would involve specifically prohibiting the merging of lists and the coalescing of related divisions, such as acquisitions, editorial, marketing, sales, and technology support for the imprint titles.

This would not be particularly popular with Pearson, as it would limit their ability to maximize economies of scale, but it would be in keeping with Pearson's assurances to the FTC prior to merger approval, which indicated that the companies would remain separate and competing. It is worth noting that the consolidation process is already well underway. Technology transfers have begun as noted above, and reorganization of the sales staff and extensive merging of book lists have been scheduled for the first half of 1999.

If the DoJ's goals are the maintenance of competition and innovation, PH and AWL texts must compete with one another as well as with texts published by other companies. The two companies must therefore maintain their distinctive character, and they should continue to develop competitive technologies for web-sites, presentations, and simulations. If that were stipulated, I am not at all convinced that a divestiture list is needed, and the authors involved could be spared a lot of personal and financial distress.

If you have any questions, please feel free to contact me. With best wishes, I remain.

Sincerely,

Frederic Martini,

martini@maui.net

Attachment 3

December 28, 1998.

Ms. M.J. Moltenbrey,

Chief, Civil Task Force, U.S. Department of Justice, 325 Seventh Street, suite 300, Washington, DC 20530.

Via Fax #202–514–7300

Re: Pearson's purchase of Viacom Publishing Businesses

Dear Ms. Moltenbrey: I am writing to voice strong opposition to the proposed settlement decree dated 11/23/98.

As one of the few remaining small players in the educational publishing world, we applaud the intent of the decree, but we have serious concerns that the decree will not achieve the intended results. It is likely that the divested products will ultimately land in the hands of one of the other giants in our industry and thus the impact of your decree will be negligible.

Your press release quotes Joel I. Klein, Assistant Attorney General of the Department of Justice Antitrust Division, ''Education is an important national priority, and competition is essential to ensure that our students have the best available educational materials.'' If you truly believe this statement, then you must take your decree one step further and allow some of the smaller players in the industry an opportunity to purchase these products. Simply allowing Pearson to sell these textbooks for an estimated $40 million to one of their next largest competitors is a serious waste of everyone's time and will not fulfill your stated objective of enhancing competition in the industry.

I would welcome an opportunity to discuss this matter with you in greater detail. Thank you for your consideration.

Sincerely,

Clayton E. Jones,

Chief Executive Officer.

Attachment 4

January 19, 1999.

Mary Jean Moltenbrey,

Chief, Civil Task Force, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 300, Washington, DC 20530.

Dear Ms. Moltenbrey, Pursuant to the matter now before the United States District Court for the District of Columbia No. 1: 98–CV–02836 (Antitrust), we are writing to comment upon the proposed ''Final Judgment'' as indicated in Section V, *PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT* of the *COMPETITIVE IMPACT STATEMENT* filed in the District Court by the plaintiff's attorney, John W. Poole (Senior Trial Attorney, U.S. Department of Justice). While we concur with the consent decree's resolution of the deleterious effects upon the elementary school science textbook market of the proposed acquisition of certain Viacom International, Inc. publishing businesses by Pearson, Inc., the decree does not address similar and potentially more damaging effects upon elementary school mathematics in the United States.

As the court document states ''absent a showing of corrupt failure of government to discharge its duty'' the court can at most determine'' ''whether the settlement is within the reaches of the public interest''. It is our contention that, insofar as the mathematical education of American children is in the public interest, the absence of a competitive impact statement regarding the elementary school mathematics textbook market renders the proposed settlement *not* ''within the reaches of public interest''. The importance of this oversight is especially critical due to the fact that the national mathematics market is three times as large as that of science.

A competitive impact statement for the elementary school mathematics textbook market would be remarkably symmetric to that provided to the Court for elementary school science (Section B–1–a, b). The following is an example of what the Justice Department should have stipulated:

Basal Elementary School Mathematics Program Market

A. Description of the Market

Most elementary schools throughout the United States teach mathematics through comprehensive mathematics programs known as ''basal elementary school mathematics programs'', which provide organization and structure as well as guidance and support in how to teach the subject. Student textbooks and teacher's editions of the textbooks are the core of most basal programs, but most also include other important educational materials and services called ''ancillary'' materials consisting of student workbooks and notebooks, audio-visual aids such as charts and videotapes, and materials for mathematics exercises and activities. Basal elementary mathematics programs also often include services such as teacher training sessions.

School districts or individual schools desiring to purchase basal elementary school mathematics programs would not turn to any alternative product in sufficient numbers to defeat a small but significant increase in the price of these programs or a reduction in the value of ancillary materials and services provided with them. For example, schools would not substitute any of the few nontraditional, alternative mathematics programs in sufficient numbers to defeat a small but significant price increase in basal elementary school mathematics programs.

B. Harm to Competition as a Consequence of the Merger

Pearson and Viacom are *two* of only *five* large publishers of basis elementary mathematics programs. They consistently have led the market, capturing a combined share of over fifty percent of new sales over the last six years. Pearson's program is a close copy of Viacom's program but, at present, has a significantly smaller market share. Pearson and Viacom also compete to maintain and improve programs that were intended to be offered to sale throughout the United States beginning in 1999.

Pearson and Viacom's aggressive competition has led to lower prices, more and better ancillary materials and services, and improvement of product quality. The proposed acquisition would eliminate this competition and would further concentrate an already highly concentrated market.

Successful entry into the basal elementary school mathematics program market is difficult, time consuming, and costly. A publisher would need to assemble editorial, sales and training staffs to develop, test, market and provide ongoing support for the new program and would need to overcome schools' reluctance to purchase an elementary school mathematics program from firms lacking an established reputation as a experienced and reliable mathematics publisher. This complaint alleges that the transaction would likely have the following effects:

a. actual and future competition between Pearson and Viacom in the elementary school mathematics textbook market would be eliminated;

b. competition generally in the market for basal elementary school mathematics programs would be substantially lessened since it is likely that Pearson would not continue the development of new products already in progress at Silver Burdett Ginn;

c. prices for basal elementary school mathematics programs would likely increase or the ancillary materials and services would likely decline; and

d. competition in the development and improvement of basal elementary school programs would likely be substantially lessened as a result of the consolidation of Addison Wesley, Scott Foresman and Silver Burdett Ginn—all acquired or to be acquired by Pearson.

Item (d) above addresses the ''development and improvement of basic elementary school mathematics programs'' and is of special significance. Prior to Pearson's acquisition and merger of Scott Foresman and Addison Wesley Longmans, both of these distinguished publishing houses competed actively and independently with Silver Burdett Ginn and three other large firms in developing innovative mathematics textbooks for American elementary schools. As a result of Pearson's merger of Scott Foresman and Addison Wesley Longmans, six major innovators were reduced immediately to five. If the Pearson acquisition of Viacom Inc's Silver Burdett Ginn division is permitted to proceed without restriction, the original six innovators will have been reduced to four in less than four years—a 33% market contraction! Together the three independent houses that will have been merged under the Pearson, Inc. label have held elementary school children and teachers—to permit Pearson, Inc. to eliminate the most viable competition in the elementary school textbook market through acquisition and suppression?

We respectfully urge that the District Court require the plaintiff to revisit the proposed final settlement to show cause why relief similar to that provided for elementary school science not be required for elementary school mathematics as well.

Respectfully submitted:

Bruce R. Vogeli,

Clifford Brewster Upton Professor, Program in Mathematics.

Herbert Ginsburg,

Jacob Schiff Professor, Program in Psychology.

Carole Greenes,

Professor of Mathematics and Associate Dean, Boston University.

Certificate of Service

This certifies that on April 22, 1999, I caused copies of the foregoing Response to Public Comments to be served as indicated upon the parties to this action and courtesy copies to be served as indicated upon each commenter:

By hand:

Robert S. Schlossberg, Esquire, Morgan, Lewis & Bockius, 1800 M Street, NW, Washington, DC 20036–5689, Counsel for Pearson plc and Pearson, Inc.

By first class certified mail:

Wayne D. Collins, Equire, Shearman & Sterling, 599 Lexington Avenue, New York, NY 10022, Counsel for Viacom International Inc.

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DEPARTMENT OF JUSTICE

Antitrust Division

FEDERAL TRADE COMMISSION

Notice of Agreement entered into by the Government of the United States of America and the Government of Australia on Mutual Antitrust Enforcement Assistance

AGENCIES: Department of Justice and Federal Trade Commission.

ACTION: Notice.

SUMMARY: Pursuant to section 7(c) of the International Antitrust Enforcement Assistance Act (IAEAA), 15 U.S.C. 6206(c), the Attorney General, with the concurrence of the Federal Trade Commission, hereby publishes the text of an Agreement entered into on April 27, 1999, by the Government of the United States of America and the Government of Australia on Mutual Antitrust Enforcement Assistance. The Agreement is the first mutual antitrust enforcement assistance agreement entered into pursuant to the IAEAA, and will enter into force in accordance with the terms of Article XIII of the Agreement.

FOR FURTHER INFORMATION: Persons wishing to learn more about the Agreement should contact Mr. Charles S. Stark, Chief, Foreign Commerce Section, Antitrust Division, Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530, 202–514–2464, or Mr. Randolph Tritell, Assistant Director, International Antitrust, Bureau of Competition, Federal Trade Commission, Washington, DC 20580, 202–326–3051.

Dated: April 28, 1999.

Charles S. Stark,

Chief, Foreign Commerce Section, Antitrust Division, Department of Justice.

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF AUSTRALIA ON MUTUAL ANTITRUST ENFORCEMENT ASSISTANCE

The Government of the United States of America and the Government of Australia (individually a ''Party'' or collectively the ''Parties''), desiring to improve the effectiveness of the enforcement of the antitrust laws of both countries through cooperation and mutual legal assistance on a reciprocal basis, hereby agree as follows:

Article I—Definitions

Antitrust Authority—refers, in the case of the United States, to the United States Department of Justice or the United States Federal Trade Commission. In the case of Australia, the term refers to the Australian Competition and Consumer Commission.

Antitrust Evidence—refers to information, testimony, statements, documents or copies thereof, or other things that are obtained, in anticipation of, or during the course of, an investigation or proceeding under the Parties' respective antitrust laws, or pursuant to the Parties' Mutual Assistance Legislation.

Antitrust Laws—refers, in the case of the United States, to the laws